IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 65 OF 2007

Ishwara Govind Warake .. Appellant.

V/s.

Dnyandeo Ganpati Gadekar & Ors. .. Respondents.

Mr. Sandesh Patili/by S.S.Tambekar for the Appellant.

CORAM : S. A. BOBDE, J.

DATED : 17th JULY, 2007.

P.C. :-

. The appellant has preferred this appeal against a judgment and order of the lower appellate court, dismissing his suit. The appellant has sued the respondents for a mandatory injunction that they be directed to demolish certain construction on the ground that it is a construction made on a road. The trial court decreed the suit but appellate court has reversed the decree and dismissed the suit.

2. The appellate court observed that the trial court ought not to have discarded the evidence of the respondent only on the ground that there was no documentary evidence showing measurement of the original

property of the defendant No.1. The appellate court relied on the Kabje Patti and the Commissioner's map admitted by the plaintiff to show the probability that the defendant No.1 had a construction in his own portion of the land. Moreover, the appellate court has re-appreciated the entire documentary evidence and the oral evidence to come to the conclusion that the respondents definitely had some property of his own on the southern side of the property of one Shri Morbale. These findings which are essentially findings of fact based on the evidence are assailed in the second appeal.

3. Having regard to the nature of the controversy referred to above, it is clear that the second appeal does not raise any substantial question of law but seeks to assail the findings of fact on the basis of evidence which has already been appreciated by the lower appellate court. Thus there is no merit in this second appeal which is hereby dismissed.

(S.A.BOBDE,J.)

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